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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,150	08/20/2004	Claudio Tonelli	07552.0035	5696
22852	7590	10/18/2007		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER DEAK, LESLIE R.	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 10/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/505,150

Applicant(s)

TONELLI ET AL.

Examiner

Leslie R. Deak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 42-83 is/are pending in the application.
- 4a) Of the above claim(s) 56-83 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/9/07 8/20/2007
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I, claims 42-55 in the reply filed on 2 August 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 42-44, 47, and 55 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,012,342 to Blight et al.

In the specification and figures, Blight discloses the method as claimed by applicant. With regard to claims 42, 43, and 55, Blight discloses a plunger assembly and testing method for occluding a flexible tube in an extracorporeal blood treatment system (see column 1, lines 14-23). The apparatus comprises a flexible tube 12, flow cut off member or plunger 10, movable portion or plunger tip 34 that can be actuated between open and closed, and a sensor assembly 52 for translating the displacement of the plunger to a measurement of force against tube 12 (see column 6, lines 52-65). The method may comprise the step of moving the plunger from an open position to a closed

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position (thereby compressing that particular length of tubing), using the sensor to check that the measured occlusion pressure actually provides a predetermined full tube occlusion (see column 8, lines 1-30).

With regard to claims 44 and 47, Blight discloses that pressure and position measurements may be made at intermediate plunger positions that regulate flow of fluid through the tube 12 (see column 7, lines 35-44).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 49, 51, 53, and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,012,342 to Blight.

In the specification and figures, Blight discloses the method substantially as claimed by applicant. With regard to claims 49, 51, 53, and 54, Blight discloses that the sensor mechanism 52 determines the occlusion pressure of the plunger assembly on the flexible tube and regulates the flow of fluid through the tube, indicating that the system regularly checks the fluid flow and occlusion pressure. If the fluid flow is not at a desired value, the system will modify the position of the plunger or movable member in order to reliably regulate fluid flow through the tube. Accordingly, it is the position of the

examiner that Blight reasonably suggests the claimed method to one of ordinary skill in the art, rendering the instantly claimed method unpatentable over the Blight disclosure.

With regard to claims 45-46, 48, Blight discloses that the Hall effect sensor senses a change in the magnetic field over time, indicating that the method comprises a step of measuring time or speed in order to determine the position of the plunger, reasonably suggesting the claimed method to one of ordinary skill in the art.

6. Claims 50 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,012,342 to Blight in view of US 5,445,613 to Orth.

In the specification and figures, Blight discloses the method substantially as claimed by applicant with the exception of the generation of an alarm signal. Orth discloses a tube occlusion mechanism for use in an extracorporeal circuit wherein an alarm is sounded if the tube fails to occlude (see column 5, lines 37-56). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to add an alarm step to the method disclosed by Blight in order to indicate an occlusion failure, as taught by Orth.

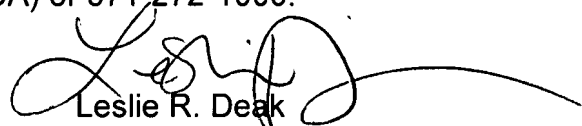
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie R. Deak whose telephone number is 571-272-4943. The examiner can normally be reached on M-F 7:30-5:00, every other Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Leslie R. Deak  
Patent Examiner  
Art Unit 3761  
27 September 2007